

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-9
RECONSIDERATION AND APPEAL OF ORDERS**

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1240-5-9-.01 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION AND/OR APPEAL OF THE INITIAL ORDER.

- (1) Except in Vocational Rehabilitation Services appeals, which are governed under State Rule 1240-5-1-.05(9)(e) and (10); Child and Adult Care Food Program appeals, which are governed under State Rule 1240-5-8-.01(9); and Summer Food Service Program appeals, which are governed under State Rule 1240-5-8-.01(8), written notice of the right to Petition for Reconsideration and/or Appeal shall accompany the Initial Order mailed to the parties.
- (2) A party may, under T.C.A. § 4-5-316, submit to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (3) A Petition for Appeal from an Initial Order must be filed with the Administrative Procedures Division if the hearing official with the Department of State conducted the contested case proceeding, or if the hearing was conducted by a hearing officer from the Department of Human Services, then the appeal must be filed with the Appeals and Hearings Division of the Department within fifteen (15) days after entry of an Initial Order.
 - (a) Pursuant to T.C.A. § 4-5-315(c), the Petition for Appeal shall state its basis.
 - (b) Pursuant to T.C.A. § 4-5-315(e), the parties shall be permitted an opportunity to file briefs, and the Department may afford each party an opportunity to present oral argument.
 - (c) Pursuant to T.C.A. § 4-5-315(f), (g), (h) and (i):
 1. The Appeals and Hearings Division may cause a transcript to be prepared at the Department's expense, of such portions of the proceeding under review as the Appeals and Hearings Division considers necessary.
 2. The Appeals and Hearings Division may render a Final Order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the Initial Order. Upon remanding a matter, the Appeals and Hearings Division may order such temporary relief as is authorized and appropriate.

(Rule 1240-5-9-.01, continued)

3. A Final Order or an order remanding the matter for further proceedings pursuant to this subparagraph (c) shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.
 4. A Final Order or an Order remanding the matter for further proceedings under this subparagraph (c), shall identify any difference between such order and the Initial Order, and shall include, or incorporate by express reference to the Initial Order, all matters required by T.C.A. § 4-5-314(c).
- (4) Also, within fifteen (15) days after entry of an Initial Order, any party may file a Petition for Reconsideration with the hearing official stating the specific grounds upon which relief is requested.
 - (5) If an Initial Order is subject to both a timely Petition for Reconsideration and to a Petition for Appeal, the Petition for Reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the Petition for Reconsideration.

Authority: T.C.A. §§ 4-5-202, 4-5-315, 4-5-317, 71-1-105(12) and 71-1-111. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-9-.02 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION OF A FINAL ORDER.

- (1) Except in Vocational Rehabilitation Services appeals, which are governed under State Rule 1240-5-1-.05(9)(e) and (10); Child and Adult Care Food Program appeals, which are governed under State Rule 1240-5-8-.01(9); and Summer Food Service Program appeals, which are governed under State Rule 1240-5-8-.01(8), if a separate Final Order is entered following the entry of an Initial Order, written notice of the right to petition for reconsideration of the Final Order is to accompany the Final Order to the parties.
- (2) Within fifteen (15) days following the date of the Final Order, any party aggrieved by a Final Order, may file a written Petition for Reconsideration which shall specify in detail the reasons for the request.

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111. **Administrative History:** Original rule filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-9-.03 EFFECT OF FILING OF PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

- (1) The filing of a Petition for Reconsideration of the Final Order shall not supersede or delay the effective date of the Final Order.
- (2) The Final Order shall take effect on the date entered by the Department and shall continue in effect until the Petition for Reconsideration shall be granted or until the Final Order is stayed, superseded, modified, or set aside in a manner provided by law.
 - (a) A party may, under T.C.A. § 4-5-316, submit to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the

(Rule 1240-5-9-.03, continued)

Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.

- (3) If a change affecting the recipient's benefits/services occurs while the reconsideration is pending, action to implement that change will not be delayed pending the decision concerning reconsideration of the Final Order.

Authority: T.C.A. §§ 4-5-202, 4-5-316, 4-5-318, 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(k)(2)(iii); and 45 C.F.R. § 205.10(a)(6)(i)(B). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-9-.04 RECONSIDERATION OF INITIAL/FINAL ORDER.

- (1) Within twenty (20) days of receiving the Petition for Reconsideration of the Initial or Final Order, the hearing official or the Commissioner or his/her designated representative, who rendered the Initial or Final Order, which is the subject of the Petition for Reconsideration, shall enter a written order either:
 - (a) Denying the petition, as provided in T.C.A. § 4-5-317(c);
 - (b) Granting the petition and setting the matter for further proceedings, as provided in T.C.A. § 4-5-317(c); or
 - (c) Granting the petition and issuing a new Initial or Final Order, as provided in T.C.A. § 4-5-317(c).
 - (d) If no action has been taken on the Petition for Reconsideration within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period, as provided in T.C.A. § 4-5-317(c).
- (2) As provided in T.C.A. § 4-5-317(d), an order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings which shall be limited to argument upon the existing record; and no new evidence shall be introduced, unless the party proposing such evidence shows good cause for his/her failure to introduce the evidence in the original proceeding.

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-9-.05 ADMINISTRATIVE RECOURSE WHEN AGGRIEVED BY FINAL ORDER AFFECTING VOCATIONAL REHABILITATION SERVICES UNDER INDIVIDUAL PLANS OF EMPLOYMENT.

When an individual being provided Vocational Rehabilitation Services under an Individualized Plan of Employment (IPE) is dissatisfied with the Impartial Hearing Official's decision resulting from the Fair Hearing as set forth in Tennessee State Rule 1240-5-1-.05(9), the individual may request review as provided in Rule 1240-5-1-.05(9) and (10).

Authority: T.C.A. §§ 4-5-202 and 71-1-105(12); 29 U.S.C. § 722(c); 34 C.F.R. § 361.48 and 34 C.F.R. § 361.57(e)(4) and (g). **Administrative History:** Original rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.